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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Numbering Resource Optimization

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CC Docket No. 99-200

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION
TO PETITIONS FOR RECONSIDERATION**

The Cellular Telecommunications Industry Association ("CTIA")¹ hereby submits its Comments in response to the petitions for reconsideration of the Report and Order and Further Notice of Proposed Rulemaking in the above captioned proceeding.²

I. INTRODUCTION

In its comments to the Commission's Notice of Proposed Rulemaking, CTIA requested that carrier utilization and forecast data submitted to NANPA be treated as confidential and proprietary and that access to such information must be limited accordingly. As CTIA explained, CMRS carriers have competitive and investment-related reasons for keeping such data confidential. For example, it may be commercially valuable for a potential competitor to learn how many telephone numbers (i.e. subscribers) a "rival" carrier has in a given market. Such

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers. CTIA represents more broadband PCS carriers and more cellular carriers than any other trade association.

² Numbering Resource Optimization, CC Docket No. 99-200, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 00-104 (rel. Mar. 31, 2000) ("Order").

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information can reveal a carrier's plans for expansion or its target market(s). In other words, public release of this type of information would negatively impact the competitive CMRS market. Thus, CTIA asked the Commission to require that all state requests for access to carrier-specific utilization data should be accompanied by enforceable non-disclosure requirements.³

CTIA further supported in its comments the ability of states to access industry or market data from the NANPA in aggregate form without prior non-disclosure limitations. Such data could permit states to calculate utilization in particular areas and allow for better forecasting of numbering resource needs without unduly risking the operation of competitive markets such as the CMRS market. To ensure, however, that confidential information not be inadvertently disclosed, aggregated information must encompass an area large enough and an industry segment wide enough such that carrier-specific proprietary information would be indiscernible.

The Commission largely agreed with CTIA.⁴ It concluded that "disaggregated, carrier-specific forecast and utilization data should be treated as confidential and should be exempt from public disclosure under [federal law]."⁵ It further required that state commissions could access data submitted by carriers to NANPA, "provided that the state commission has appropriate protections in place (which may include confidentiality agreements or designation of information as proprietary under state law) that would preclude disclosure to any entity other than the NANPA or the Commission."⁶ While CTIA applauds the Commission's decision to require states

³ Prior to the adoption of the Order, many CMRS providers were working cooperatively with states to provide them with useful numbering information, so long as confidentiality agreements were in place.

⁴ Order at ¶¶ 74-82.

⁵ Order at ¶ 78.

⁶ Order at ¶ 81.

to protect the confidentiality of disaggregated data reported to the NANPA, it supports Verizon Wireless' petition requesting clarification that carrier-specific aggregated data must also be protected by the same confidentiality requirements that protect disaggregated carrier-specific data.⁷

II. THE RELEASE OF CARRIER-SPECIFIC AGGREGATED UTILIZATION DATA FOR CMRS PROVIDERS MAY HAVE THE EFFECT OF REVEALING HIGHLY SENSITIVE FINANCIAL AND COMMERCIAL INFORMATION AND MUST THEREFORE BE PROTECTED.

By adopting confidentiality requirements for carrier-specific disaggregated data submitted to the NANPA, the Commission has expressly recognized that the public disclosure of numbering utilization information would have a detrimental effect on the operation of competitive markets. Somewhat inexplicably, however, the Commission seems to have provided for an exception when it stated, in dictum, that it agreed "with commenters that aggregated data (such as each carrier's NPA wide utilization rate and number of NXXs assigned) do not require the type of confidential protections that we adopt here."⁸ This implied exception to the confidentiality requirements impermissibly risks the disclosure of commercially sensitive information, in particular as applied to CMRS providers.

As an initial matter, the Commission has clearly misconstrued the comments for which it finds support.⁹ These comments discussed the possible dissemination of data aggregated by

⁷ Numbering Resource Optimization, CC Docket No. 99-200, *Verizon Wireless Petition for Clarification and Reconsideration* at 21-22 (filed July 17, 2000).

⁸ Order at ¶ 79 (emphasis added).

⁹ The Commission relied on the comments of SBC, MCI WorldCom, GTE, AT&T and Ameritech. Order at ¶ 79, n.146.

industry segment or for the entire telecommunications industry. The comments do not, however, support the public release of utilization data aggregated by carrier at the NPA-level, or any level for that matter. Because there is no rational connection between the decision to permit the release of carrier-specific aggregated data and the comments filed, it would be arbitrary and capricious for the Commission to maintain this position.¹⁰

The concern, of course, is that carrier-specific aggregated data, "such as each carrier's NPA wide utilization rate,"¹¹ could be easily disaggregated in such a fashion that it fails to provide for the concerns the Commission has acknowledged through its confidentiality protections. In fact, this was clearly addressed by SBC in its comments when it contended that NANPA "should be prohibited from disclosing carrier-specific data (including data aggregated in such a manner that carrier-specific data can be derived from the data provided)."¹² MCI WorldCom's comments also urge that "[i]f NANPA makes any public presentation of COCUS

¹⁰ See Motor Vehicles Manufacturers Association v. State Farm Mutual, 463 U.S. 29, 43 (1983) ("Normally, an agency rule would be arbitrary and capricious if the agency . . . offered an explanation for its decision that runs counter to the evidence before the agency."); Burlington Truck Lines, Inc. v. U.S., 371 U.S. 156, 168 (1962) (requiring a "rational connection between the facts found and the choice made"); cf. San Luis Obispo Mothers For Peace v. N.R.C., 751 F.2d 1287, 1325 (D.C. Cir. 1984) ("The principle that judges review administrative action on the basis of the agency's stated rationale and findings . . . is well-established.") (emphasis in original); Kansas State Network Inc. v. F.C.C., 720 F.2d 185, 191 (D.C. Cir. 1983) ("an agency's action should be reviewed based upon what it accomplishes and the agency's stated justifications.") (emphasis added).

¹¹ Order at ¶ 79.

¹² Numbering Resource Optimization, CC Docket No. 99-200, *Comments of SBC Communications* at 56 (filed July 30, 1999).

data, it should do so only in aggregate form, either for the industry as a whole or by industry segment, without revealing any code holder-specific information."¹³

The suggestion that CMRS carrier reports to NANPA could be aggregated on a carrier-specific basis at the NPA level is particularly troubling for CMRS providers. Because CMRS providers are not bounded by wireline rate center boundaries, and indeed, CMRS carriers typically market their services and compete over areas much larger than rate centers, the protection of carrier-specific subscribership information only at the rate center offers no protection at all. As the Commission recently recognized, CMRS providers operate in a highly competitive market.¹⁴ In competitive markets, there is little information that is guarded more closely by competitors than subscribership rates. The Commission recognized as much when it recently concluded that CMRS providers could seek confidential treatment for "state-by-state subscriber counts."¹⁵ Clearly, if state-by-state subscriber counts are sensitive enough to warrant confidential treatment, NPA-level information must be similarly protected.¹⁶

¹³ Numbering Resource Optimization, CC Docket No. 99-200, *Comments of MCI WorldCom, Inc.* at 42, (filed July 30, 1999) (emphasis added).

¹⁴ FCC Releases Fifth Annual Report on State of Wireless Industry; Report Finds Wireless Competition Is Increasing, *News Release* at 1 (Aug. 3, 2000) (finding that "during the past five years consumers have continued to benefit from the effects of increased competition in the wireless industry. Increased competition has resulted in lower prices and a wider array of wireless service offerings.").

¹⁵ See Local Competition and Broadband Reporting, CC Docket No. 99-301, *Report and Order*, FCC 00-114 (rel. March 30, 2000) ¶ 92.

¹⁶ See id. (explaining that the Commission's intent is to "report data in a manner that aggregates and does not identify the identity of providers where providers have requested non-disclosure of the data.") (emphasis added); id. at ¶ 93 ("[W]e can aggregate much of the data -- for example, by carrier class and to the state level -- so that it does not identify the individual provider in our regularly published reports.") (emphasis added).

Moreover, the Commission's Rules already provide for confidential treatment of carrier-specific NPA-wide utilization rates. Specifically, under the rules, NANPA is required to maintain the confidentiality of carriers' COCUS reports which report data at the NPA level.¹⁷ Although the COCUS filing requirements have changed, and non-rural carriers are now required to report data at the thousand block level per rate center, nothing in the record provides the Commission with a basis for departing from the confidential protections carrier-specific NPA data has received in the past.

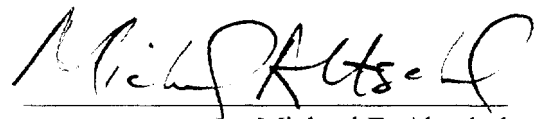
¹⁷ 47 C.F.R. § 52.13 (c)(7); see 47 C.F.R. § 52.16 (c) (requiring that company-specific reports be kept confidential, without providing any exception for aggregated carrier-specific data); cf. 47 C.F.R. § 54.711 (b) (requiring that company specific information provided to the universal service administrative company be kept confidential, unless ordered otherwise by the Commission).

III. CONCLUSION

For these reasons, CTIA respectfully requests that the Commission clarify that aggregated data derived from carrier reports to NANPA must be maintained confidential, unless such reports cover an entire industry or industry segment, or a geographic area large enough, such that no particular carrier's utilization information would be discernible.

Respectfully submitted,

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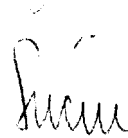
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